

# House File 182 - Introduced

HOUSE FILE \_\_\_\_\_  
BY LENSING

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act concerning disclosures of information by health care  
2 workers and providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 2155YH 82  
5 ec/je/5

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1 1 Section 1. NEW SECTION. 147.105 PATIENT PROTECTION ==  
1 2 HEALTH CARE WORKERS == REPORT OF ADVERSE EVENTS.  
1 3 1. DEFINITIONS. As used in this section, unless the  
1 4 context otherwise requires:  
1 5 a. "Health care worker" means any individual employed by  
1 6 or under contract with a hospital, health care provider, or  
1 7 health care agency to provide health care services.  
1 8 b. "Professional standards of care" means authoritative  
1 9 statements that describe a level of care or performance common  
1 10 to the profession by which the quality of professional  
1 11 practice can be judged and which reflect the values and  
1 12 priorities of the profession.  
1 13 2. A health care worker, who reasonably believes a  
1 14 particular practice the health care worker has observed  
1 15 occurring at the health care worker's place of employment,  
1 16 based on the health care worker's professional standards of  
1 17 care or professional code of ethics, is a violation of health  
1 18 and safety laws or a breach of public safety that may lead to  
1 19 harm to patients, consumers, or citizens, may report the  
1 20 information relating to the violation or breach within  
1 21 fourteen days of its occurrence to the health care worker's  
1 22 supervisor or employer, in order that corrective action can be  
1 23 taken. The health care worker shall be protected against  
1 24 reprisals or retaliatory or punitive action by the individual  
1 25 or institution receiving such a report.  
1 26 3. If after a reasonable period of time for correction of  
1 27 the violation or breach reported pursuant to subsection 2, the  
1 28 health care worker continues to see the particular practice  
1 29 occurring in the workplace giving rise to the report, the  
1 30 health care worker may disclose information to the licensing  
1 31 board, the department, the division of insurance in the  
1 32 department of commerce, a member or employee of the general  
1 33 assembly, the attorney general, a state-mandated health  
1 34 information collection agency, any other public official or  
1 35 law enforcement agency, federal government agency or program,  
2 1 the governing board of the health care worker's employer or  
2 2 institution, or the health care worker's professional  
2 3 association, and shall be protected against reprisals or  
2 4 retaliatory or punitive actions by the individual or  
2 5 institution if disclosure of the information is not otherwise  
2 6 prohibited by statute and if the information meets any of the  
2 7 following requirements:  
2 8 a. Constitutes state-mandated health data required to be  
2 9 submitted to state agencies.  
2 10 b. Informs state agencies or entities of violations of  
2 11 state health, safety, occupational health, licensure, or  
2 12 insurance laws.  
2 13 c. Is reasonably believed by the health care worker to be  
2 14 a violation of health and safety laws or a breach of public  
2 15 safety that may lead to harm to patients, consumers, or  
2 16 citizens, based upon the health care worker's professional  
2 17 standards of care or professional code of ethics.  
2 18 A health care worker making a disclosure which violates any  
2 19 provision of the federal Health Insurance Portability and  
2 20 Accountability Act, Pub. L. No. 104=191, shall not be entitled

2 21 to protection pursuant to this section nor entitled to civil  
2 22 remedies which might otherwise be available pursuant to  
2 23 subsection 7.

2 24 4. A health care worker disclosing in good faith the  
2 25 information described in subsections 2 and 3 shall be presumed  
2 26 to have established a prima facie case showing a violation of  
2 27 subsection 2 or 3 by the health care worker's employer if the  
2 28 individual or institution employing the health care worker  
2 29 knows or has reason to know of the disclosure, and if  
2 30 subsequent to and as a result of the disclosure, one or more  
2 31 of the following actions were initiated by the employer:

2 32 a. Discharge of the health care worker from employment.

2 33 b. Failure by the employer to take action regarding a  
2 34 health care worker's appointment to, promotion or proposed  
2 35 promotion to, or receipt of any advantage or benefit in the  
3 1 health care worker's position of employment.

3 2 c. Any adverse change to the health care worker's terms or  
3 3 conditions of employment or any administrative, civil, or  
3 4 criminal action or other effort that diminished the  
3 5 professional competence, reputation, stature, or marketability  
3 6 of the health care worker.

3 7 An employer shall have the burden of proof regarding any  
3 8 attempt to show that actions taken pursuant to this subsection  
3 9 were for a legitimate business purpose.

3 10 5. If an individual or institution employing a health care  
3 11 worker is determined to have violated state health, safety, or  
3 12 occupational health and health licensure laws or regulations,  
3 13 or professional standards of care or a professional code of  
3 14 ethics, after a disclosure pursuant to subsection 2 or 3  
3 15 results in an action as described in subsection 4, such a  
3 16 determination shall create a presumption of retaliation or  
3 17 reprisal against the health care worker in violation of this  
3 18 section. Disclosure of a reasonable belief that violations of  
3 19 health and safety laws or breaches of public safety have  
3 20 occurred that have caused or have a potential to cause harm to  
3 21 patients, consumers, and citizens shall immediately trigger  
3 22 the protection afforded by this section.

3 23 6. A person who violates this section commits a simple  
3 24 misdemeanor and is subject to a civil action as follows:

3 25 a. A person who violates this section is liable to an  
3 26 aggrieved health care worker for affirmative relief, including  
3 27 reinstatement with or without back pay, or any other equitable  
3 28 relief the court deems appropriate, including attorney fees  
3 29 and costs and punitive or exemplary damages.

3 30 b. When a person commits, is committing, or proposes to  
3 31 commit an act in violation of this section, an injunction may  
3 32 be granted through an action in district court to prohibit the  
3 33 person from continuing such acts. The action for injunctive  
3 34 relief may be brought by an aggrieved health care worker or by  
3 35 the county attorney.

4 1 7. In addition to any other penalties applicable to a  
4 2 person who violates this section, an individual, institution,  
4 3 or organization employing a person who violates this section  
4 4 shall be subject to a civil penalty in the amount of one  
4 5 thousand dollars per violation.

#### 4 6 EXPLANATION

4 7 This bill provides protection for health care workers  
4 8 against retaliation or reprisals resulting from the disclosure  
4 9 of certain information.

4 10 The bill creates new Code section 147.105 to provide  
4 11 protection for health care workers against retaliation or  
4 12 reprisals resulting from the disclosure of certain  
4 13 information.

4 14 The new Code section provides that a health care worker who  
4 15 discloses information to a state or federal board, department,  
4 16 or agency, including the attorney general and law enforcement  
4 17 personnel, as described in the bill, after a reasonable  
4 18 opportunity to make a report and take corrective action has  
4 19 transpired on the part of the individual or institution which  
4 20 employs the health care worker and which is the subject of the  
4 21 disclosure, shall be protected against reprisals or  
4 22 retaliatory or punitive actions by the employer if disclosure  
4 23 of the information is not otherwise prohibited by statute.  
4 24 The bill provides that for this provision to apply, the  
4 25 information disclosed shall constitute state-mandated health  
4 26 data required to be submitted to a state agency, or inform a  
4 27 state agency or entity of a violation of state health, safety,  
4 28 occupational health, licensure, and insurance laws, or is  
4 29 reasonably believed by the health care worker to be a  
4 30 violation of health and safety laws or a breach of public  
4 31 safety that may lead to harm to patients, consumers, or

4 32 citizens, based upon the health care worker's professional  
4 33 standards of care and professional code of ethics. The bill  
4 34 provides that this provision shall not be applicable to a  
4 35 disclosure which constitutes a violation of the federal Health  
5 1 Insurance Portability and Accountability Act.

5 2 The new Code section provides that a health care worker  
5 3 disclosing in good faith this information shall be presumed to  
5 4 have established a prima facie case if the employer knows or  
5 5 has reason to know of the disclosure, and if following and as  
5 6 a result of the disclosure the health care worker was  
5 7 discharged from employment, or there was a failure by the  
5 8 employer to take action regarding a health care worker's  
5 9 appointment or promotion, or any adverse change to the health  
5 10 care worker's terms or conditions of employment as well as any  
5 11 administrative, civil, or criminal action or other effort that  
5 12 diminishes the professional competence, reputation, stature,  
5 13 or marketability of the health care worker. The bill provides  
5 14 that the employer shall have the burden of proof regarding any  
5 15 attempt to show that these actions were undertaken for a  
5 16 legitimate business purpose.

5 17 The new Code section provides that if an employer is  
5 18 determined to have violated state health, safety, or  
5 19 occupational health or health licensure laws or regulations,  
5 20 or professional standards of care or a professional code of  
5 21 ethics, after a disclosure by a health care worker resulting  
5 22 in an action taken against the worker as described in the  
5 23 bill, this creates a presumption of retaliation or reprisal.  
5 24 The bill provides that violations of health and safety laws or  
5 25 breaches of public safety that have caused or have a potential  
5 26 to cause harm to patients, consumers, and citizens immediately  
5 27 trigger protection.

5 28 The new Code section provides that violations constitute a  
5 29 simple misdemeanor, and may also be grounds for a civil  
5 30 action. The bill provides that in such an action, an employer  
5 31 may be liable to an aggrieved health care worker for  
5 32 affirmative relief, including reinstatement with or without  
5 33 back pay, and other equitable relief the court deems  
5 34 appropriate, including attorney fees and costs and punitive or  
5 35 exemplary damages. The bill also provides for injunctive  
6 1 relief. The bill provides that in addition to other  
6 2 penalties, an individual, institution, or organization  
6 3 employing a person found to be in violation of the bill's  
6 4 provisions shall be subject to a civil penalty in the amount  
6 5 of \$1,000 per violation.

6 6 LSB 2155YH 82

6 7 ec:nh/je/5